

REMARKS

The Applicant wishes to thank the Examiner for his examination of the present application and for the Examiner's interview of June 26, 2008 at which time the present remarks were discussed. Claims 1, 34, 76, 80, 84, and 93 have been amended, and claims 123-125 have been added, such that claims 1-36, 38-69, 76-78, 80, 84, 93-96 and 121-125 are currently pending. No new matter has been added.

35 U.S.C. §103

Claims 1-36, 38-69, 76-78, 80, 84, and 93-96 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent no. 6,652,587 (Felt et al., hereinafter Felt) in view of U.S. patent no. 5,522,900 (Hollister). Claim 1 is directed at an articular implant that includes, in part, a first surface and a second surface wherein the first surface opposes a first articular surface of a joint and the second surface opposes a second articular surface of a joint. At least a portion of each one of the first and second surfaces of the implant has a three-dimensional shape that substantially conforms with or duplicates the shape of the first articular surface.

Felt discloses an implant that has a tibial surface shape designed to be formed to and congruent with the tibial surface, and a generally planar femoral surface shape that is designed to include a glide path with respect to the femoral condyle (see Fell at col. 5, lines -10, and col. 13, lines 23). Nowhere does Felt disclose an implant in which at least a portion of *each* of the first and second surfaces of the implant has a three-dimensional shape that substantially conforms with or duplicates the shape of the first articular surface, as required by amended claim 1 (emphasis added).

The disclosure of Hollister fails to satisfy the deficiencies of the Felt reference. Hollister discloses a thumb prosthesis that includes two components having surfaces attached to bone, and which have bearing surfaces that mate with each other so as to mimic the natural joint movement (see Hollister at Figs. 5A-6B). Nowhere does Hollister disclose an implant in which at least a portion of each of the first and second surfaces of the implant has a three-dimensional shape that substantially conforms with or duplicates the shape of the first articular surface, as required by amended claim 1.

Since neither Felt nor Hollister disclose or suggest an implant in which at least a portion of each one of the first and second surfaces has a three-dimensional shape that either substantially conforms with or duplicates the shape of the first articular surface, as required by amended claim 1, amended claim 1 is patentable over the combination of Felt and Hollister. Claims 2-33 and 42-65 which depend from amended claim 1, are likewise patentable over Felt and Hollister and are further allowable in view of the additional limitations set forth therein.

Amended independent claim 34 and dependent claims 35, 36, and 38-41; claims 66-69, which depend on claim 1 or 34; amended independent claim 76 and dependent claims 77 and 78, amended independent claims 80 and 84; and amended independent claim 93 and dependent claims 94-96 each reflect (with minor variation) that at least a portion of each of the first and second surfaces of the implant has a three-dimensional shape that substantially conforms with or duplicates the shape of the first articular surface, and thus are allowable for the same reasons as claim 1, and are further allowable in view of the additional limitations set forth therein.

It is submitted that all pending claims are in condition for allowance.
Reconsideration of the claims and a notice of allowance are therefore requested.

Applicants believe that no extension of time is required; however, this conditional petition is being made to provide for the possibility that the applicant has inadvertently overlooked the need for an extension of time. Please charge deposit account 19-4972. If any additional fees are required for the timely consideration of this application, please charge deposit account number 19-4972.

The Examiner is requested to telephone the undersigned if any matters remain outstanding so that they may be resolved expeditiously.

Respectfully submitted,

Alexander J. Smolenski, Jr., #47,953/

Alexander J. Smolenski, Jr.
Registration No. 47,953
Attorney for Applicant

Bromberg & Sunstein LLP
125 Summer Street
Boston, MA 02110-1618
(617) 443-9292
02960/00112 907851.1